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No. 98-1124

In The

# Supreme Court of the United States

October Term, 1998

MONEM KABIR AND GREGORY P. RUEBUSCH,

*Petitioners,*

v.

SILICON VALLEY BANK
ROBERT GIONFRIDDO
ROBERT McMILLAN
SHERRY STEVENS
MARC CADIEUX
ROGER SMITH
JOHN DEAN
BACKSTROM & NEAL
MICHAEL SPENCE
ROBERT DANEY
WON CHOE,

*Respondents.*

On Petition For Writ Of Certiorari
To The California State Supreme Court

## BRIEF IN OPPOSITION

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## INTRODUCTION

Monem Kabir and Gregory P. Ruebusch petition this Court to review the October 14, 1998 decision of the Supreme Court of the State of California denying their petition for review of the June 16, 1998 decision of the Court of Appeal of the State of California, Sixth Appellate District affirming the trial court's order granting preliminary injunctive relief to respondents. The injunction enjoined and prohibited petitioners from engaging or committing, performing directly or indirectly, the dissemination of documents or otherwise publishing information to any one other than their counsel of record or between themselves any matters which accuse respondents Backstrom & Neal, Michael Spence or Robert Daney of illegal or criminal acts, of any kind, as well as any other defamatory statement. This included, but was not limited to accusations regarding respondents having committed illegal acts and preparing fraudulent financial statements.

## PROCEDURAL HISTORY

Respondents Backstrom & Neal, Michael Spence and Robert Daney are defendants in a pending action in the Superior Court of the State of California for the County of Santa Clara, in which Kabir and Ruebusch (in pro per) are pursuing damages for Fraud, Fraudulent Concealment, Deceit, Conspiracy to Defraud and Intentional Interference with Economic Relationship. Prior to filing their complaint in the underlying action, Kabir and Ruebusch began to disseminate defamatory newsletters regarding

Backstrom & Neal, Michael Spence and Robert Daney. The newsletters, called "Do You Know the Truth Newsletter", falsely accused Backstrom & Neal, Michael Spence and Robert Daney of criminal and fraudulent activity. The newsletters were distributed throughout the San Jose, California community where the respondents conducted business.

In response to the insidious newsletters, Backstrom & Neal, Michael Spence and Robert Daney applied for and obtained a temporary restraining order. Shortly thereafter, Honorable Judge Peter J. Stone, who had granted the temporary restraining order, granted respondents' motion for a preliminary injunction restricting Kabir and Ruebusch from disseminating their newsletters and prohibiting them from coming within 100 feet of the respondents, their homes and business. A similar preliminary injunction restricting Kabir and Ruebusch was also obtained by respondents Silicon Valley Bank, Roger Smith, Robert McMillan, Robert Gionfriddo, Sherry Stevens, Marc Cadieux and John Dean, all of whom are named defendants in the underlying action.

Kabir and Ruebusch filed an appeal to the orders granting the preliminary injunctions with the Court of Appeal of the State of California, Sixth Appellate District. On June 16, 1998 the Court of Appeal filed its unpublished opinion affirming the orders of the trial court granting the injunctive relief. Petitioners never raised in these appeals whether the orders granting the injunctions violated the petitioners' Fourteenth Amendment rights to due process.

Thereafter, the petitioners filed a petition for review of the decision of the Court of Appeal with the Supreme Court of the State of California. The Supreme Court of the State of California denied the petition on October 14, 1998.

## THE UNITED STATES SUPREME COURT SHOULD SUMMARILY DENY THE PETITION

### A. THE UNITED STATES SUPREME COURT LACKS JURISDICTION TO ADDRESS THE QUESTIONS RAISED BY PETITIONERS.

As can best be determined from the convoluted language of the petition, the questions presented for review are whether the injunction against petitioners is a violation of their rights under the First and Fourteenth Amendments, and whether the injunction is an abuse of discretion on the part of the trial court and as such violates the statutory requirements of California *Code of Civil Procedure* Section 529.

Petitioners cite 28 U.S.C. Section 1257(a) as the basis for jurisdiction in this Court. 28 U.S.C. Section 1257(a) states:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where

> any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

The final judgment that the petitioners seek to have this Court review is the decision of the Supreme Court of the State of California to deny review of the decision of the Court of Appeal of the State of California, Sixth Appellate District affirming the trial court's order granting respondents' preliminary injunction.

The petitioners' appeal to the Court of Appeal of the State of California, Sixth Appellate District was based on the grounds that the trial court failed to require the posting of an undertaking as condition of granting the injunctions pursuant to California *Code of Civil Procedure* section 529, subsection (a), and that the injunctions were unconstitutional prior restraints on the exercise of their First Amendment rights to free speech. Petitioners never raised, nor did the Court of Appeal address, the issue of whether the orders granting the injunctions violated the petitioners' Fourteenth Amendment rights to due process.

The United States Supreme Court lacks jurisdiction for purposes of determining whether the injunction against petitioners is a violation of their rights under the Fourteenth Amendment since there has been no final judgment or decree rendered by the California Supreme Court addressing the issue of whether the injunction violates the petitioners' right to due process under the Fourteenth Amendment.

The United States Supreme Court also lacks jurisdiction to rule on the issue of whether the injunction is an abuse of discretion on the part of the trial court and as such violates the statutory requirements of California *Code of Civil Procedure* Section 529, since this issue does not draw into question the validity of a federal treaty or statute. Further, petitioners' challenge to the injunction on an abuse of discretion theory does not bring into question the validity of California *Code of Civil Procedure* Section 529 on the ground of it being repugnant to the Constitution, treaties, or laws of the United States, or any title, right, privilege, or immunity claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

## B. THE PETITION FAILS TO COMPLY WITH THE REQUIREMENTS OF SUPREME COURT RULES, RULE 14, AND THEREFORE SHOULD BE DENIED.

Pursuant to Supreme Court Rules, Rule 14.1(a) the petition for a writ of certiorari is to contain the questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. The questions are to be short and should not be argumentative or repetitive.

Despite the requirements of Rule 14.1, the questions presented by petitioners for review are ambiguous and argumentative. As written, respondents are unable to decipher the particular issues the petitioners are requesting that this Court review.

### C. THE PETITION IS REPLETE WITH DISTORTIONS AND ASSERTIONS OF FACT OUTSIDE THE RECORD PRESENTED BY PETITIONERS TO THE APPELLATE COURT.

The petition presented to this Court contains assertions not presented to the appellate court. Petitioners failed to present many of these issues to the appellate court or to request rehearing in the matter. Petitioners articulate many statements in their petition that are unsupported by anything in the appellate record. Many of the petitioners' comments are distortions or outright fabrication in an attempt to besmirch the reputations of Backstrom & Neal, Michael Spence and Robert Daney. Petitioners make no effort to demonstrate that the assertions they set forth concerning what occurred in depositions or before the Discovery Master was in any way presented to the trial court or to the appellate courts. These are all matters which could have been presented to the appellate courts but were not.

### D. THE PETITIONERS FAIL TO SET FORTH ANY COMPELLING REASONS TO JUSTIFY THE UNITED STATES SUPREME COURT EXERCISING ITS DISCRETION IN GRANTING THE PETITION FOR WRIT OF CERTIORARI.

The criteria by which the United States Supreme Court will consider granting a petition for writ of certiorari is set forth in Supreme Court Rules, Rule 10. This rule provides:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for

compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeal;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Petitioners patently fail to set forth in their petition any compelling reason for the United States Supreme Court to exercise its discretion in granting their petition

for a writ of certiorari. The decision that the petitioners seek to have this Court review does not conflict with the decision of a United States Court of Appeals, the decision of another state court of last resort, or with any relevant decision of this Court. Beyond this, the issue in question does not remotely involve an important federal question that has not been settled by this Court. The petition is completely devoid of any reason to justify the Court granting the petition, let alone a reason congruous with the requirements set forth in Supreme Court Rules, Rule 10.

The petition is based solely on the petitioners' assertion that the decision of the trial court and that of the Court of Appeal of the State of California, Sixth Appellate District was based on what the petitioners allege to have been an erroneous factual findings and a misapplication of state law. The decision of the Court of Appeal of the State of California, Sixth Appellate District was well reasoned and based upon ample settled authority. As Rule 10 states, "a petition for a writ of certiorari is *rarely* granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

## CONCLUSION

Based on the foregoing, this Court should deny Kabir and Ruebusch's petition for writ of certiorari.

Respectfully submitted,

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